

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine Matejcek	Team: Squad #7	CCRB Case #: 201800817	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/24/2018 5:03 PM	Location of Incident: § 87(2)(b) [REDACTED] at the 109th Precinct stationhouse	Precinct: 109	18 Mo. SOL 7/24/2019	EO SOL 7/24/2019	
Date/Time CV Reported Thu, 01/25/2018 10:08 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/30/2018 11:06 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Kinkaid	00990	947657	109 PCT
2. POM Andrew Amoroso	07073	961489	109 PCT
3. POM Scott Schiralli	09589	961257	109 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Dominick Vulpis	21344	960060	109 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Scott Schiralli	Abuse: On January 24, 2018, Police Officer Scott Schiralli entered § 87(2)(b) in Queens.	[REDACTED]
B.POM Andrew Amoroso	Abuse: On January 24, 2018, Police Officer Andrew Amoroso entered § 87(2)(b) in Queens.	[REDACTED]
C.POM Brian Kinkaid	Discourtesy: On January 25, 2018 at the 109th Precinct stationhouse, Police Officer Brian Kinkaid spoke discourteously to § 87(2)(b)	[REDACTED]
D.POM Brian Kinkaid	Abuse: On January 25, 2018 at the 109th Precinct stationhouse, Police Officer Brian Kinkaid refused to provide his name and shield number to § 87(2)(b)	[REDACTED]
E.POM Brian Kinkaid	Abuse: On January 25, 2018 at the 109th Precinct stationhouse, Police Officer Brian Kinkaid threatened to arrest § 87(2)(b)	[REDACTED]

Case Summary

On January 25, 2018, § 87(2)(b) filed this complaint via phone with IAB [01 Board Review]. It was received at the CCRB on January 30, 2018.

§ 87(2)(b) and his ex-girlfriend, § 87(2)(b) are involved in a custody dispute over their § 87(2)(b)-old son, § 87(2)(b). At 5:03 p.m. on January 24, 2018, § 87(2)(b) and her mother, § 87(2)(b) called 911 to report that § 87(2)(b)'s mother, § 87(2)(b) was refusing to let her pick up her son from § 87(2)(b)'s apartment, § 87(2)(b) in Queens. PO Scott Schiralli and PO Andrew Amoroso of the 109th Precinct arrived on scene and spoke with § 87(2)(b)'s roommate, § 87(2)(b) who was home alone at the time. PO Schiralli and PO Amoroso entered the apartment, but did not locate § 87(2)(b) (Allegations A and B: Abuse of Authority, § 87(2)(g))

At 5:30 p.m. on January 25, 2018, § 87(2)(b) his girlfriend, § 87(2)(b) § 87(2)(b)'s § 87(2)(b)-old daughter, and § 87(2)(b) went to the 109th Precinct stationhouse and spoke with PO Brian Kinkaid of the 109th Precinct about the incident. PO Kinkaid allegedly told § 87(2)(b) to "shut the fuck up" (Allegation C: Discourtesy, § 87(2)(g)) and refused to provide his name and shield number to § 87(2)(b) (Allegation D: Abuse of Authority, § 87(2)(g)). PO Kinkaid threatened to arrest § 87(2)(b) for trespassing after she refused to leave the stationhouse (Allegation E: Abuse of Authority, § 87(2)(g))

No one was arrested or issued a summons as a result of these incidents. Video footage recorded by § 87(2)(b) in the 109th Precinct stationhouse is attached to Board Review 2. § 87(2)(g)

Allegation A – Abuse of Authority: On January 24, 2018, Police Officer Scott Schiralli entered § 87(2)(b) in Queens.

Allegation B – Abuse of Authority: On January 24, 2018, Police Officer Andrew Amoroso entered § 87(2)(b) in Queens.

§ 87(2)(g)

At the time of the incident, § 87(2)(b) resided at § 87(2)(b) in Queens with § 87(2)(b) and § 87(2)(b). He and § 87(2)(b) had an informal custody agreement over § 87(2)(b) and he usually stayed with § 87(2)(b) on weekdays. On January 24, 2018, § 87(2)(b) asked § 87(2)(b) if she could remove § 87(2)(b) from school early and § 87(2)(b) said no. In response, § 87(2)(b) texted § 87(2)(b) and threatened to call the police. Later that day, § 87(2)(b) returned home and was informed by § 87(2)(b) that officers had entered the apartment while he was at home by himself in search of § 87(2)(b) [03 Board Review].

During a phone statement, § 87(2)(b) stated that he was alone in the apartment when officers knocked on the door. He opened the door almost all the way to find PO Schiralli, PO Amoroso, § 87(2)(b) and § 87(2)(b) standing in the hallway. § 87(2)(b) stood directly in front of the doorway as PO Schiralli asked him if he was home alone, if he knew § 87(2)(b) and if he had seen § 87(2)(b) at the apartment before. § 87(2)(b) explained

that § 87(2)(b) and § 87(2)(b) usually stayed at the apartment but that no one else was home at the time. Without asking permission, PO Amoroso walked into the apartment, followed by PO Schiralli, § 87(2)(b) and § 87(2)(b). The officers did not have to push the door open or make contact with § 87(2)(b) in order to enter, because the door was fully open. § 87(2)(b) did not protest the officers' entry. PO Amoroso entered § 87(2)(b)'s bedroom and looked around with a flashlight. He did not ask any questions to determine whose room it was. PO Schiralli walked towards § 87(2)(b) bedroom and asked whose room it was. When § 87(2)(b) said that it was his, PO Schiralli entered it without asking and opened the closet door to check inside. He then entered a bathroom and moved the shower curtain to look inside the shower. The officers did not open any sealed compartments within the apartment. Although § 87(2)(b) never asked the officers to leave, he did ask that they show him a warrant or other paperwork justifying their presence. The officers told him that they did not have any such paperwork. After approximately 25 minutes inside the apartment, the officers left. § 87(2)(b) never mentioned that a language barrier was a factor in this incident and had no apparent issues answering questions about the incident in English [04 Board Review].

§ 87(2)(b) explained that, shortly prior to the incident, § 87(2)(b) learned that § 87(2)(b) was having behavioral issues in school and decided that he should move back in with her. § 87(2)(b) called § 87(2)(b) and § 87(2)(b) to inform them that she would be picking § 87(2)(b) up that evening, but they told her no and threatened to involve a lawyer. § 87(2)(b) and § 87(2)(b) called 911 for assistance before attempting to retrieve § 87(2)(b) from § 87(2)(b)'s apartment. PO Schiralli and PO Amoroso arrived on scene and agreed to supervise the custody exchange. § 87(2)(b) answered the door and stated that he was home alone. § 87(2)(b) noted that § 87(2)(b) appeared to be having difficulties understanding the officers, so she translated parts of the conversation into Spanish for him. § 87(2)(b) stated that, with her assistance, § 87(2)(b) fully understood the purpose of the visit. After a brief exchange, § 87(2)(b) said "You can come in and look," fully opened the door, stepped to the side, and made a gesture as if to welcome the officers into the apartment. Neither officer requested to enter the apartment. The group entered the apartment, and PO Amoroso stood in the doorway with § 87(2)(b) and § 87(2)(b) while PO Schiralli walked through the kitchen and living room, which are adjacent to the front door. PO Schiralli looked inside, but did not enter, a bathroom and a bedroom. As this was going on, § 87(2)(b) stood in the doorway and shared stories about § 87(2)(b) with § 87(2)(b). § 87(2)(b) characterized his behavior as pleasant and friendly, and stated that he never seemed upset or asked the officers to leave the apartment. § 87(2)(b) did not identify which bedroom was his. The officers left the apartment after six minutes when they determined that § 87(2)(b) was not present [05 Board Review].

§ 87(2)(b) § 87(2)(g) also noted that § 87(2)(b) had some trouble comprehending the officers' English, but that with § 87(2)(b)'s translation, he appeared to understand what was going on. § 87(2)(b) stated that PO Schiralli asked § 87(2)(b) if the officers could check the apartment and that § 87(2)(b) said yes, opened the door fully, and stepped to the side. He did not make any gestures. Upon entry, § 87(2)(b) entered a bedroom and was followed in by PO Schiralli. § 87(2)(b) believed that the room belonged to § 87(2)(b) because he had gone in, but there was no discussion regarding whose room it was. She did not see what happened within the bedroom. The officers

did not enter any other rooms. § 87(2)(b) never expressed discontent or asked the officers to leave the apartment, and the officers exited within a matter of minutes [06 Board Review].

PO Amoroso stated that, when § 87(2)(b) answered the door, he told them that he was home alone and had no knowledge of the situation, which § 87(2)(b) and § 87(2)(b) confirmed. An officer, most likely PO Schiralli, asked § 87(2)(b) if they could come in and check the apartment to confirm that § 87(2)(b) § 87(2)(b) was not present. § 87(2)(b) said “sure” and stepped aside to allow officers entry. PO Schiralli and § 87(2)(b) walked in on the opposite side of a partition, so PO Amoroso did not see what they did. Later, PO Amoroso learned that PO Schiralli had entered § 87(2)(b) bedroom. He never learned how PO Schiralli determined that the bedroom was § 87(2)(b). As this was happening, PO Amoroso entered an open door into a bathroom, which he visually inspected. PO Amoroso conducted a visual inspection of the bedroom without crossing its threshold to check whether § 87(2)(b) was hidden inside. He never learned whose room it was. Shortly thereafter, he and PO Schiralli exited the apartment. Throughout this incident, § 87(2)(b) never asked them to leave the apartment or did anything to indicate that he was upset [07 Board Review].

PO Schiralli testified that § 87(2)(b) opened the apartment door halfway and stood between the opening and the apartment. He stated that he was home alone and had no knowledge of the situation. An officer (PO Schiralli did not recall which) asked to enter the apartment. § 87(2)(b) § 87(2)(b) said yes and opened the door all the way to allow the officers into the apartment. PO Schiralli noticed that there were no lights on in the apartment except for in a bedroom on one side of the partition. § 87(2)(b) walked into that bedroom. These factors led PO Schiralli to deduce that the bedroom belonged to § 87(2)(b) so he followed him into the bedroom and conducted a cursory visual inspection to ensure that § 87(2)(b) was not doing anything suspicious inside. He then conducted a visual inspection in the living room, where he looked behind the couches and under a table. As this was going on, PO Amoroso was on the other side of the partition, so PO Schiralli could not see what he was doing. PO Schiralli never learned whether he entered or checked any rooms. § 87(2)(b) never did anything to indicate that he was upset or asked the officers to leave the apartment, and the officers left after less than three minutes [08 Board Review].

Officers do not require founded suspicion of criminality to request consent to enter and search a premises; this standard, as outlined in People v. De Bour, applies only to street encounters. In cases where officers request consent to enter and search a premises, the only applicable standard is whether or not consent was voluntarily given. People v. Madden, 58 A.D.3d 1023 (2009); People v. De Bour, 40 N.Y.2d 210 (1976) [09, 10 Board Review]. The police may lawfully conduct a warrantless search when they have obtained the voluntary consent of a party who possesses the requisite degree of authority and control over the premises or personal property in question. People v. Cosme, 48 N.Y.2d 286 (1979) [11 Board Review]. Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. People v. Gonzalez, 39 N.Y.2d 122 (1976) [12 Board Review]. Whether consent to a search is voluntary is a question of fact to be determined from all of the circumstances, and no one circumstance is determinative of the voluntariness of consent. People v. Harper, 100 A.D.3d 772 (2012) [13 Board Review]. Courts have considered a suspect’s limited knowledge of

English, whether the suspect was cooperative after giving consent, and whether the suspect was advised of their right to refuse consent when determining whether consent was voluntary. People v. Chou, 203 A.D.2d 299 (1994); People v. Gonzalez, 39 N.Y.2d 122 (1976) [14, 12 Board Review].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy: On January 25, 2018 at the 109th Precinct stationhouse, Police Officer Brian Kinkaid spoke discourteously to § 87(2)(b)

Allegation D – Abuse of Authority: On January 25, 2018 at the 109th Precinct stationhouse, Police Officer Brian Kinkaid refused to provide his name and shield number to § 87(2)(b)

Allegation E – Abuse of Authority: On January 25, 2018 at the 109th Precinct stationhouse, Police Officer Brian Kinkaid threatened to arrest § 87(2)(b)

After learning about the entries from § 87(2)(b) § 87(2)(b) went to the 109th Precinct stationhouse the following day to get information about the officers involved. He was

accompanied by § 87(2)(b) and § 87(2)(b)'s § 87(2)(b)-old daughter. PO Kinkaid guided the group to a private room adjacent to the waiting area and they explained the situation. § 87(2)(b) appeared to be having difficulties articulating herself in English, so § 87(2)(b) interjected and, in a polite tone of voice, told PO Kinkaid that they were just trying to figure out whether the involved officers had a warrant. PO Kinkaid responded by stating “Shut the fuck up, I’m not talking to you” and asking him to leave the stationhouse. § 87(2)(b) complied. Later, he learned from § 87(2)(b) that PO Kinkaid had refused to provide her with his name and shield number and had threatened to arrest her if she refused to leave the stationhouse [03 Board Review].

After missing an interview appointment at the CCRB, § 87(2)(b) did not respond to subsequent contact attempts and thus did not provide a sworn statement for this case. During a phone statement, § 87(2)(b) stated that PO Kinkaid said “Don’t fucking come up to me like that” to § 87(2)(b). After § 87(2)(b) exited the stationhouse, § 87(2)(b) asked PO Kinkaid to write down the names and shield numbers of the officers who entered her home, but he told her that he could not do so because he did not have a pen and paper. PO Kinkaid asked § 87(2)(b) to leave the stationhouse, at which point another officer, PO Dominick Vulpis, began to follow her out of the building. On her way out, § 87(2)(b) asked PO Kinkaid to write down his name and shield number for her, but he told her again that he did not have a pen and paper. However, § 87(2)(b) was able to obtain his name by looking at his badge. After making this request, § 87(2)(b) took a video of the officers to show how close they were standing to her and exited the stationhouse. § 87(2)(b) did not allege that PO Kinkaid threatened to arrest her and did not say whether PO Kinkaid asked her to leave the stationhouse or whether she ignored any lawful orders [15 Board Review].



IA 39, 25 seconds.3gp

Video provided to IAB by § 87(2)(b) shows her panning the camera between PO Kinkaid and PO Vulpis and stating each of their names. § 87(2)(b) asks “Why am I to leave? Because I’m asking for an officer’s name,” to which PO Kinkaid responds “You have my name” and points to his badge. § 87(2)(b) asks PO Kinkaid “Are you trying to arrest me?” and PO Kinkaid says “No, I’m asking you to leave, this is the 20th time at least” [02 Board Review].

§ 87(2)(b) did not provide a statement for this case.

PO Kinkaid testified that he was standing in the stationhouse when § 87(2)(b) flung open the stationhouse door and shouted “Warrant!” PO Kinkaid asked what was going on and the group explained that they wanted information about a warrant, so he led them into the 124 room, which is adjacent to the waiting room, to discuss the issue. § 87(2)(b) paced around the room while PO Kinkaid spoke with § 87(2)(b) and § 87(2)(b). Eventually, § 87(2)(b) interjected by shouting “Where’s the fucking warrant?” PO Kinkaid told § 87(2)(b) that he did not want to talk to him and that he needed to leave. At first, § 87(2)(b) ignored him, but once PO Kinkaid repeated his request, he left of his own volition. PO Kinkaid stated that, although he did raise his voice at § 87(2)(b) he did not tell him to “Shut the fuck up” or use profanity towards him in any other context. After he left, PO Kinkaid spoke with § 87(2)(b) and § 87(2)(b) for 30 to 45 more minutes. PO Kinkaid told them that he could not do anything to resolve the custody dispute

between § 87(2)(b) and § 87(2)(b) which made § 87(2)(b) upset. At the end of their conversation, PO Kinkaid asked § 87(2)(b) to leave the stationhouse, but § 87(2)(b) refused. Over the subsequent five minutes, PO Kinkaid asked § 87(2)(b) to leave dozens of times, but § 87(2)(b) refused to leave. She asked PO Kinkaid if she could take a picture of his badge, and he allowed her to do so. She did not make any additional request for his name or shield number and there was never any discussion about whether he had a pen and paper to write down this information. PO Kinkaid stated that he never refused to provide his name or shield number. After PO Kinkaid had asked § 87(2)(b) to leave at least 12 times, she accused him of trying to arrest her. PO Kinkaid informed § 87(2)(b) that she was not under arrest, but that if she refused to leave the stationhouse, she could be arrested for trespassing. After he made this comment, she started to record him. At that point, PO Vulpis, who was assigned to stationhouse security, approached her and asked her to leave. Eventually, § 87(2)(b) who until that point had been observing silently, asked § 87(2)(b) to leave the stationhouse, and she complied [16 Board Review].

A person is guilty of criminal trespass when she knowingly enters or remains on a premise unlawfully, and defies a lawful order by an authorized person to leave the location. N.Y.S. Penal Law, Section 140.05 [17 Board Review].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties [18, 22 Board Review].
- PO Amoroso has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Schiralli has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Kinkaid has been a member-of-service for nine years and has been a subject in two CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of April 30, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint [19, 21 Board Review].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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